

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

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H. LUNDBECK A/S, TAKEDA PHARMACEUTICAL
COMPANY LTD., TAKEDA PHARMACEUTICALS : CIVIL ACTION
U.S.A., INC., TAKEDA PHARMACEUTICALS :
INTERNATIONAL AG, and TAKEDA :
PHARMACEUTICALS AMERICA, INC., :
:
Plaintiffs, : (Consolidated)
v :
:
APOTEX INC., APOTEX CORP., and APOTEX :
RESEARCH PRIVATE LIMITED, et al., :
:
Defendants. : NO. 18-88-LPS

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Wilmington, Delaware
Friday, June 26, 2020
Telephone Conference

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BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

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APPEARANCES:

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MEGAN ELIZABETH DELLINGER, ESQ.

and

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P R O C E E D I N G S

(REPORTER'S NOTE: The following telephone conference was held remotely, beginning at 2:34 p.m.)

THE COURT: Good afternoon, everybody. This is Judge Stark. I know we have a lot of people there; and I'm going to ask the lawyers who want to enter an appearance to identify themselves, starting with the plaintiffs, please.

MR. BLUMENFELD: Good afternoon, Your Honor. It's Jack Blumenfeld from Morris Nichols for the plaintiffs. Megan Dellinger from Morris Nichols is also on; and from Covington and Burling, George Pappas, Einar Stole, and Brianne Bharkhda.

THE COURT: Okay. Thank you.

MR. BLUMENFELD: Thank you.

MR. PHILLIPS: Good afternoon, Your Honor. This is Jack Phillips of Phillips, McLaughlin & Hall.

And with me on the phone for Zydus are David Abramowitz, Carolyn Blessing, and Tim Peterson of the Locke Lord firm.

And on behalf of Sigmapharm, Marc Wezowski, Tom Heneghan, Dustin Taylor, and Tim Meffert from Husch Blackwell. Thank you.

THE COURT: Thank you.

MR. GATTUSO: Good afternoon, Your Honor. It's

1 Dominick Gattuso from Heyman Gattuso Enerio & Hirzel on
2 behalf of the defendants. And with me on the line --
3 (indecipherable).

4 THE COURT: Mr. Gattuso, can you hear me?

5 MR. GATTUSO: Yes, sir.

6 THE COURT: I'm afraid there is some
7 interference, and I can't hear you.

8 MR. GATTUSO: I apologize, Your Honor. Is this
9 better?

10 THE COURT: That's much better. Yes.

11 MR. GATTUSO: Sorry about that.

12 THE COURT: I heard you introduce yourself and
13 nobody else, so go ahead, please.

14 MR. GATTUSO: Sure. With me on the phone is
15 Laura Lydigsen, Mark Remus, and Jieun Lee from Brinks Gilson
16 & Leone.

17 THE COURT: And which defendants are you for?

18 MR. GATTUSO: For Sandoz and Lek
19 Pharmaceuticals. And my apologies for the bad connection.

20 THE COURT: That's okay. It happens. Thank
21 you.

22 Who else, please?

23 MR. FINEMAN: Good afternoon, Your Honor. This
24 is Steve Fineman from Richards Layton on behalf of Princeton
25 and Zhejiang Huahai. Also on the phone with me are Yixin

1 Tang, and I believe Shashank Upadhye has also joined, both
2 from the firm Upadhye Cwik.

3 THE COURT: Okay. Thank you.

4 MS. KRAMAN: Good afternoon, Your Honor.

5 MS. PEDI: Good afternoon, Your Honor.

6 MS. KRAMAN: This is Pilar Kraman from Young
7 Conaway for Alkem. With me on the line is Aaron Eckenthal
8 from Lerner David.

9 THE COURT: Okay.

10 MS. SCHAD: Good afternoon, Your Honor.
11 Veronica Schad for defendant Lupin. With me are my
12 co-counsel in this matter, Joe Janusz, Lance Soderstrom, and
13 Deepto Mukerjee on behalf of Lupin.

14 THE COURT: Okay.

15 MS. PEDI: Good afternoon, Your Honor. This is
16 Nicole Pedi from Richards Layton & Finger for Alembic; and
17 I'm joined on the line by Brad Graveline, Jesse Salen, and
18 Evan Sumner from Sheppard Mullin.

19 THE COURT: Okay.

20 MS. RILEY: Good afternoon, Your Honor. This is
21 Stephanie Riley from Connolly Gallagher on behalf of
22 Torrent. Also on the line is Ahmed Abdel-Rahman from
23 Pillsbury Winthrop Shaw & Pittman.

24 THE COURT: Okay.

25 MR. TOWNSEND: Good afternoon, Your Honor. This

1 is Bryan Townsend on behalf of Apotex; and also on the line
2 is Ian Scott from Taft Stettinius & Hollister in Chicago.

3 THE COURT: Okay.

4 MR. GRIVNER: Good afternoon, Your Honor.
5 Geoffrey Grivner from Buchanan Ingersoll & Rooney on behalf
6 of MSN. With me on the line are Matt Fedowitz and Grant
7 Shackelford also from the same firm.

8 THE COURT: Okay.

9 MS. NICOLE: Good afternoon, Your Honor. This
10 is Renee Delcollo from Richards Layton & Finger on behalf of
11 Macleod. I'm joined by Chris Sorenson and Karen Beckman of
12 Merchant & Gould.

13 THE COURT: Okay.

14 Mr. Blumenfeld, do you believe there are any
15 other defendants represented?

16 (Pause.)

17 THE COURT: Mr. Blumenfeld, are you there?

18 Are the plaintiffs there?

19 MR. BLUMENFELD: I am, Your Honor. I'm sorry.
20 I muted when we had that interference, but I believe all the
21 defendants are on. There should be 11, and I think they all
22 have appeared.

23 THE COURT: Yes, I count 11 who have appeared,
24 so thank you. I have a court reporter with me and to all
25 this; and I'll note for the record it's our case of H.

1 Lundbeck A/S versus Apotex Inc., et al. I should say
2 plaintiffs are "et al" as well, Consolidated Civil Action
3 No. 18-88-LPS.

4 This is the time that I had originally set to
5 talk about the pending recently filed motions. We resolved
6 those yesterday, so today I principally want to talk about
7 issues that you all may want to raise relating to discovery
8 and relating to trial. I also provided you some information
9 yesterday about my schedule; and I know we are all living in
10 unprecedented times and are facing challenges that we did
11 not expect when this schedule was set, so I do appreciate
12 that the parties were interested in at least starting a
13 conversation about some of those issues, about how to get
14 from here to the end of this case; and that is what I
15 principally scheduled our time for today.

16 So with that, I'm going to start with the
17 plaintiffs, and then I will just turn it over to defendants
18 generally. You all will have to figure out a way to figure
19 out what order you, that is, the defendants, want to be
20 heard.

21 So with that, why don't we start and hear what
22 plaintiffs want to talk about today.

23 MR. BLUMENFELD: Thank you, Your Honor. It's
24 Jack Blumenfeld.

25 So we sent you the letter yesterday; and we had

1 in fact spoken very briefly with the defendants' counsel
2 about logistics in terms of expert discovery in terms of
3 moving to a trial, actually just before we got Your Honor's
4 order, so we have started the conversation.

5 And just to give you a very brief summary of
6 where the case is, as I said, we have 11 defendants, there
7 are four patents pending against everyone, and then four
8 other patents that are each pending against one or two
9 defendants. We are in the middle of expert discovery, and
10 two rounds of expert discovery are done, the first two.

11 So far, there have been 28 experts who have
12 submitted reports, some of them multiple reports. Six of
13 them are in Europe, one in Canada, and the others are
14 scattered around the United States. We have another round,
15 the final round of expert reports hopefully, due toward the
16 end of July.

17 We haven't agreed on the expert deposition
18 hours, but that's the conversation we were having yesterday.
19 The parties have exchanged, say, preliminary proposals, and
20 we're starting the conversation. You know, we have some
21 differences of view there, but however you count it, there
22 is going to be hundreds of hours of expert depositions. And
23 from our side, from the plaintiffs' side, even before we
24 got your order yesterday, we didn't see how it was doable to
25 finish the expert discovery and prepare for trial in a

1 responsible way and get there by October. In fact, during
2 the call yesterday, one of the defendants' counsel asked us
3 if we were going to ask to move the trial date, and then a
4 few minutes later we got Your Honor's order.

5 But from our side, the way we see things, we
6 would like to be able to finish discovery, expert discovery
7 in a much more -- not a leisure way at all, but in a much
8 more reasonable way. And when we were talking yesterday,
9 we were talking about the possibility of having expert
10 depositions on weekends, double booking, and we would like
11 to do it in a way where we're working to get it done but on
12 a reasonable schedule; and from our side, we think we could
13 get everything done and get the pretrial order done and be
14 ready for trial.

15 And if it's possible, we would like to get on
16 Your Honor's trial calendar as early in 2021 as we can
17 instead of October. We think that would permit us to
18 prepare responsibly for Your Honor and for our clients.

19 We obviously don't know what Your Honor's
20 schedule is like or when you could give us days, but
21 hopefully whenever the trial is from our point of view, we
22 would like to have it live, if that is possible.

23 As Your Honor had noted at the beginning, the
24 world is in a little bit of a state of flux. Maybe it will
25 be better early next year, we all hope that it is, but we

1 would -- if at all possible, we would prefer to do a live
2 trial.

3 So that's kind of where we see the case now and
4 where we would like it to be heading.

5 THE COURT: Okay. Well, I think it is probably
6 best for me to hear the defendants' perspective. I may have
7 some questions for you, but let me see who wants to speak
8 first for defendant.

9 MR. ABRAMOWITZ: Your Honor, this is David
10 Abramowitz for Zydus.

11 I think I will be first; and I'm glad to hear
12 from Mr. Blumenfeld sort of where plaintiffs are. I don't
13 think defendants are that differently situated.

14 We are -- we believe that this case is close to
15 wrapping up. We're in the middle of expert discovery, and
16 given Your Honor's schedule and an extra month, for example,
17 for expert discovery into September and October would
18 certainly provide a lot less need for double tracking or
19 weekends or other strenuous situations with expert
20 depositions.

21 I think what we would like is, if we could get
22 on Your Honor's calendar, we don't know when, as early as we
23 can; given that sort of schedule, I think we would like to
24 do a pretrial some time in early November, if we could.
25 That way, we have everything all wrapped up for Your Honor

1 whenever it is you feel like you can get us in.

2 I agree live is always preferable.

3 I am optimistic that the world will continue to
4 change but realistic in that I'm not sure that even in
5 January or February we're going to escape being able to have
6 to do at least part of this via video.

7 I guess where we're standing is we would like to
8 do as much of it consecutively as Your Honor could allow us,
9 at least in terms of, you know, with the family patents, all
10 the experts on that testify within the same week or a set of
11 days.

12 We would like to avoid -- I think it would be
13 easier for Your Honor not to have random this Tuesday --
14 this week on Tuesday we'll have a chemistry person, and then
15 on Thursday a medical doctor, and then the evidence coming
16 in sort of haphazardly without you getting to hear the whole
17 story from each side on each family of patents in sort of a
18 condensed area where you are not having to think back four
19 weeks into what the last expert said.

20 THE COURT: Okay. And the only distinction I'm
21 hearing from what Mr. Blumenfeld is saying is if I could get
22 you in for a trial in late November or December, you would
23 prefer that over as early in 2021 as possible; right?

24 MR. ABRAMOWITZ: I think if we could do
25 something that Your Honor feels like would be organized

1 enough that you're not having to remember three weeks ago
2 what this expert says, that would be preferable, but we
3 understand, if 2021 is the best that your schedule offers,
4 then, of course, we'll take whatever works.

5 THE COURT: All right. Are you speaking on
6 behalf of Zydus at this point?

7 MR. ABRAMOWITZ: Actually, I'm speaking on
8 behalf of all the defendants. I think that we view this
9 case, as Mr. Blumenfeld said, we nearing the end of expert
10 discovery, we could use more time on depositions to wrap up
11 the PTO, but we're getting ready to go the best and safest
12 that Your Honor thinks do it.

13 THE COURT: All right. I appreciate that.

14 I guess in terms of the discovery, you were all
15 in the midst of talking evidently when I hit you with my
16 order yesterday. It would seem that I should probably give
17 you all time to further those discussions. Do you have some
18 reasonable confidence, Mr. Abramowitz, that you all could
19 come to an agreement on the number of deposition hours and,
20 if I were to give you a trial date, what a reasonable expert
21 discovery cutoff date would be?

22 MR. ABRAMOWITZ: I think for certain, Your
23 Honor. The parties have been working fairly hard at trying
24 to find a compromise that works for everybody, understanding
25 in this very unprecedented world we live in that some things

1 have to be sacrificed where other things hopefully can be
2 made more efficient.

3 THE COURT: Right. And then for the defendants'
4 perspective, as I look at the calendar to try to figure out
5 a trial date, overall, how many days do you think this might
6 be, assuming we were doing, if I had a full day, six-seven
7 hours of trial time a day?

8 MR. ABRAMOWITZ: I think that if you have a full
9 day, I guess the question is how many -- there is an
10 invalidity portion and noninfringement portion obviously for
11 the defendants, individual defendants. That is why primer
12 cases where the defendants will have their experts for a
13 short amount of time talking about their individual products.

14 I think that for the general case, we could
15 certainly get done in four to five days. The question is
16 how we would like to space out those infringement experts.
17 That is where the 28 experts that Mr. Blumenfeld discussed,
18 that's over half of them, so ...

19 THE COURT: So maybe, roughly speaking, five
20 trial days for all the common issues and then however many
21 days that might be needed for individual infringement
22 related issues? That is how you would see it?

23 MR. ABRAMOWITZ: Yes, I think so.

24 THE COURT: All right. Well, thank you for
25 speaking on behalf of all the defendants.

1 Mr. Blumenfeld, I didn't hear a lot really in
2 dispute, but you may have something to say. And I would be
3 curious of that estimate as to how long a trial in terms of
4 days it looks to you.

5 MR. BLUMENFELD: Your Honor, I have just two
6 quick points; and Mr. Pappas may also have some responses,
7 if that is okay with Your Honor.

8 It sounds like Mr. Abramowitz and I are not far
9 apart, the plaintiffs and the defendants aren't far apart.

10 I guess one thing I would say is that if we're
11 talking about expert discovery, expert depositions out to
12 October/September, which I think both sides I think agree is
13 going to be necessary, I don't see how we get to a pretrial
14 conference in early November, but all of this hinges on what
15 Your Honor's schedule is. I just think that is a little bit
16 optimistic.

17 On the length of trial, I think there are nine
18 days that were originally scheduled; and it may be that we
19 can cut a little bit, some defendants have settled, maybe a
20 couple more will settle, but I would think that it's going
21 to be somewhere between a week and two weeks, and maybe
22 seven or eight days, and how much of that may have to be
23 done remotely is a little bit of an unknown right now.

24 And with that, I guess I don't know whether
25 Mr. Pappas has some things he wants to raise also.

1 MR. PAPPAS: Good afternoon, Your Honor. George
2 Pappas for the plaintiff. Am I coming through loud and
3 clear, Your Honor?

4 THE COURT: Yes.

5 MR. PAPPAS: Okay. The one issue, and I think
6 it's probably applies to both sides, and just for our
7 planning purposes, it would help if we had some indication
8 of how, whenever the trial is, depending on the status of
9 the world and health generally, how you would proceed. That
10 is, Your Honor, both sides I believe have expert witnesses
11 from outside the United States; and this, of course,
12 implicates travel restrictions that we can't predict. One
13 possible restriction is U.S. citizens leaving to go to
14 another country but more germanely there may be restrictions
15 either enforced by a foreign company, foreign country on
16 their witnesses traveling and/or by the U.S., should the
17 government decide that there are countries from whom they do
18 not want visitors. And we can't predict that now. As Your
19 Honor knows, it could change at any time.

20 So looking ahead to whenever you are able to
21 schedule the trial, Your Honor, would Your Honor be
22 disposed, if necessary, to receive the testimony of an
23 out-of-country witness by Zoom so it would be live in the
24 sense that you would see the witness and direct and
25 cross-examination could be done?

1 It's certainly not our preference. We think
2 they should, to the extent, maximum extent possible be in
3 court; but I'm bringing this up only because it was in your
4 order about the possibility of having some done by Zoom;
5 and I just, we just want to alert the Court that there are
6 expert witnesses and perhaps some fact witnesses that are
7 outside the boundaries of the U.S. and, therefore, depending
8 on the state of the world at the time, may simply precluded
9 from traveling.

10 So any advice or guidance you could give us at
11 this time I think would help both sides there, frankly.
12 Thank you, Your Honor.

13 THE COURT: Sure. Thanks for raising the
14 question. I will speak to that in just a minute. I'll have
15 some things to say, and then I will give everyone a chance
16 to react and say anything else they want.

17 But Mr. Abramowitz or any other defendant, is
18 there anything else you want to put on the table for now or
19 any response or anything with respect to what you heard just
20 now from Mr. Pappas or Mr. Blumenfeld?

21 MR. ABRAMOWITZ: Your Honor, this is
22 Mr. Abramowitz.

23 I agree that seven or eight days total could be
24 a possibility, depending on how many defendants settle.

25 I agree with Mr. Blumenfeld, I agree with

1 Mr. Pappas that I certainly think even if we were to do some
2 part of this trial live that there are witnesses, and not
3 just internationally, but we have some witnesses as I say
4 scattered throughout the United States. From states, that
5 Delaware, for example, and other states like Illinois and
6 New York and New Jersey, some states that at the moment they
7 aren't real excited about having people travel from. So we
8 look to Your Honor's guidance as to Zoom and how you would
9 like to handle that, if that becomes an issue later on.

10 THE COURT: Okay. Fine.

11 So let me say a few things based on what you all
12 have told me and the question that you have raised. And as
13 I say, I will want to hear if there is any response or
14 further things that you want to talk about; but first things
15 first.

16 I do order that you all continue to meet and
17 confer and aim to work out a revised schedule to complete
18 expert discovery. That includes I hope you will all agree
19 on the number of expert deposition hours and all other
20 issues with respect to the mechanics of it, but I want to
21 hear back from you all in a joint letter that the plaintiffs
22 can submit on behalf of everyone.

23 I want hear back from you by the end of the day
24 Tuesday to indicate again hopefully that you have worked all
25 of that out, and, if not, to flag for me as succinctly as

1 you can what remaining disputes there are so that I can get
2 you a resolution.

3 Now, in terms of trial, I am going to continue
4 trial from October. That is implicit in what I said
5 yesterday as now I have also become enlightened by the
6 parties' positions.

7 I am going to be looking closely at my calendar
8 with a goal towards getting you a trial date that is
9 telling you what the trial date is by the end of next week.
10 Obviously, I don't mean we're going to trial next week,
11 but I'm having a lot of these conversations, as I'm sure
12 probably you all are in many of your cases, and I need to
13 get some additional responses and input in a few other cases
14 and then look carefully at my calendar.

15 But when I look next week, I'm going to be doing
16 my best to find an eight-day period or, if need be, perhaps
17 two four-day periods as close as possible together, but I'm
18 going to ideally look for an eight-day period some time
19 ideally between December and February, so perhaps as early
20 as December of this year, perhaps as late as February. I'm
21 going to identify a block or blocks and I'm going to give
22 that to you.

23 Now, what will that mean?

24 More so than in normal time, when I would be
25 scheduling whatever trial date I ultimately give you in that

1 time frame, I need you to prepare as if it's a real date.
2 It is a real date, but it is going to be more tentative than
3 I would like it to be because of the circumstances that are
4 beyond everybody's control. So I think you understand what
5 I mean, but let me just tell you a little bit concretely.

6 I have trials of one form or another on my
7 calendar pretty much for every week between August and
8 March. I don't know which of those trials are going to
9 go forward, not just because, of course, I don't know if
10 parties are going to settle or criminal defendants are going
11 to plead, but I don't know when for sure it's going to be
12 safe for me to be in the courtroom again, so I can't predict
13 which trials that are now set for August, September, October
14 are going to have to be rescheduled; and I can't predict, of
15 those, which ones may in fairness just have to take higher
16 priority than your trial.

17 For instance, basically if it's a criminal trial
18 and the defendant is in custody or, of course, has a Speedy
19 Trial right in all the cases. If those criminal trials
20 between now and your date all get continued because it turns
21 out we can't safely pick a jury and the time we can safely
22 pick a jury turns out to be the eight days in January, let's
23 just say that I give you, regrettably, I'm going to have to
24 come back to you all and say I'm going to need to move your
25 trial date again.

1 Obviously, I'm going to do my best to preserve
2 whatever trial date I'm able to give you, but I really just
3 am in a situation, as we all are in our world, where there
4 is just so much uncertainty and so little to control what is
5 going to happen next.

6 All that said, that is what I'm going to try to
7 do by the end of next week. I think we will have a date.
8 You will be on my calendar. It will be my goal that that is
9 when the trial will be.

10 Now, what will that trial look like?

11 We will tentatively, and I mean "tentative," and
12 I have been putting in a lot of my orders "tentative," we
13 will tentatively schedule this for a live in-court trial. I
14 agree that that is ideal.

15 I have no way of predicting no better than the
16 rest of you whether December, January, or February, it will
17 be reasonable and safe for us all to be in the courtroom for
18 together, for some of us to be in the courtroom together, or
19 possibly none of us to be in the courtroom together. So it
20 will be tentatively scheduled as if all is going to be fine
21 and most or all of us will be able to be together, but you
22 have to view that as completely tentative.

23 A corollary to that is I can say now no matter
24 how good the world looks when we get to this trial, I will
25 be extremely open to any request that somebody not come to

1 the courtroom to testify. So whether that means Zoom
2 testimony, that is fine. Whether it means having to watch
3 more depositions than we otherwise would, that's fine.
4 Whether there is some other creative way we have to get the
5 evidence, I will be open to all of that.

6 I will not, certainly by next February, I will
7 not be in a position where I will have any interest in
8 ordering a lawyer or a witness to travel to Delaware and
9 come testify live in my courtroom who is in any way
10 reluctant or resistant to do that.

11 Now, all that said, depending on what the world
12 looks like, I think you also need to be prepared for the
13 possibility that if it turns out as we get closer to the
14 trial, and let's just say the plaintiffs tell me that
15 90 percent of their trial team and witnesses can make it
16 safely to court and the defendants tell me only 10 percent
17 of their trial team or witnesses can make it to court, and
18 if any party argues that that is unfair or I intuitively
19 feel to myself that that is unfair, you need to be prepared
20 for the possibility that I will just say that basically
21 nobody is coming to the courtroom. We'll just do this
22 completely remotely.

23 I'm not hoping for that. I'm hoping not to have
24 to make any difficult decisions in that way. Of course, we
25 all hope that this all fully 100 percent fully behind us

1 come December/January/February, but as best as I can tell,
2 none of us know what the world is going to look like at that
3 point.

4 You do have the slight benefit of I have a few
5 bench trials that are ahead of yours that are on my calendar,
6 so I will probably have to confront a lot of these issues
7 before we get to yours; and I am more than willing, if you all
8 request it, to have additional status conferences and talk
9 these issues through as things get closer, but we're going to
10 put you on for what we all hope will be an eight day or two
11 four day close in time trial days in the December to February
12 period, and that we all hope and will tentatively schedule it
13 being live and as in-person as is safe for everyone, but I do
14 need you to understand that while you do have to get ready for
15 that trial, and I'm going to hope that it's a real, it's a
16 real date and a real trial, there is so much uncertainty that
17 a lot of things could throw it off.

18 So that is my guidance and my plan. I'm happy
19 to talk further if you have any questions or other issues
20 that I may have prompted.

21 Mr. Blumenfeld, or Mr. Pappas, first for
22 plaintiffs?

23 MR. BLUMENFELD: Not from me, Your Honor. We
24 will talk to the defendants and hopefully by Tuesday, we'll
25 be able to work something out; and we appreciate your

1 flexibility given where we are.

2 THE COURT: Okay.

3 MR. PAPPAS: Same here, Your Honor. George
4 Pappas. And I have nothing further.

5 THE COURT: Okay. Thank you.

6 Mr. Abramowitz.

7 MR. ABRAMOWITZ: Thank you, Your Honor. Nothing
8 really further. I appreciate your flexibility and your
9 willingness to look at this creatively.

10 We'll certainly talk with the plaintiffs about
11 getting the expert discovery sorted out, but we appreciate
12 your candor and your realistic look at everything; and we
13 will take it one step at a time with you.

14 THE COURT: Thank you.

15 MR. REMUS: Your Honor, this is Mark Remus for
16 Sandoz.

17 Defendants do have one more issue they would
18 like to raise with Your Honor, if that is okay. It's
19 separate from the trial scheduling. That is why I haven't
20 raised it sooner.

21 THE COURT: Sure. That will be fine. Let me
22 just first ask the blanket to the other ten defendants.
23 Anybody else want to say anything related to the trial or
24 the issues that have already been discussed?

25 (Pause.)

1 THE COURT: All right. Sounds like not. So
2 sure, go ahead and again identify yourself for me, please.

3 MR. REMUS: Sure. This is Mark Remus
4 representing Sandoz and speaking on behalf of all
5 defendants.

6 The request we have is as follows:

7 In view of the Court's denial of defendants'
8 motion to strike plaintiffs' expert report from their FDA
9 expert, Dr. Peck, defendants request leave to file a
10 responsive expert report responding to the opinions that
11 Dr. Peck expressed. If the Court grants leave, we're
12 confident we can reach an agreed schedule with plaintiffs to
13 exchange that report and complete discovery within the time
14 allotted, but we did want to make request and make sure that
15 responsive report was okay with Your Honor.

16 THE COURT: Right. Can plaintiffs respond? Is
17 there any objection to that?

18 MR. BLUMENFELD: Your Honor, this is Jack
19 Blumenfeld. I don't want to make this confrontational. I
20 wish it had been raised with us in advance.

21 But what I would suggest here is permit us to
22 discuss it among ourselves and to discuss it with Mr. Remus
23 and maybe hopefully tell you next Tuesday that there is no
24 issue there also, but I would like the opportunity to
25 discuss it with the people on our side.

1 THE COURT: Okay. So I am not, myself, opposed
2 to it, but I'm also not ready to order it over the objection
3 of the plaintiffs, if there is an objection from the
4 plaintiffs.

5 My hope is that you will all work that out, but
6 since you are meeting and conferring relating to expert
7 issues anyway, I think it is wise to have you meet and
8 confer on that specific issue. If it does turn out that
9 you don't reach an agreement on that, then I should be able
10 to discuss that dispute very briefly in what comes in on
11 Tuesday since I am familiar with the plaintiffs' expert at
12 this point.

13 Does that respond to the question, Mr. Remus?
14 And any questions about that?

15 MR. REMUS: No, that makes perfect sense. Thank
16 you, Your Honor.

17 THE COURT: Okay. And I actually have a
18 Sandoz-related question, so you may be the one to answer it.

19 I'm just about done with my opinion on the
20 fairly aged motion at this point that you had for dismissal
21 or judgment on the pleadings. That is still a ripe motion,
22 I take it, that you would like a decision on; is that right?

23 MR. REMUS: It is, Your Honor.

24 THE COURT: Okay. And in terms of, do I need
25 to issue my opinion under seal and give you a chance to

1 redact? It, of course, talks about the conversion from four
2 to three, but I think we had that discussion in open court,
3 so would you be requesting that I consider issuing that
4 under seal initially?

5 MR. REMUS: I believe Your Honor is correct that
6 that is already on the public docket, but I will also -- my
7 colleague Laura Lydigsen is on the phone, and she may have a
8 better recollection on it as well, and she can chime in as
9 well as to whether anything needs to be sealed.

10 THE COURT: Thank you.

11 MS. LYDIGSEN: Yes, Your Honor. This is Laura
12 Lydigsen.

13 The discussion was on a public docket, but
14 Sandoz would appreciate the opportunity to review. We will,
15 of course, not request redaction to anything that was
16 disclosed in open court.

17 THE COURT: Okay. Understood.

18 All right. That was all the issues I had.
19 Anybody else have any other they want to raise?

20 (Pause.)

21 THE COURT: All right. Well, thank you all very
22 much. I hope everyone is staying safe and healthy; and I
23 look forward to hopefully some time soon seeing you in the
24 courtroom; and in the meantime, I will look for your
25 submission on Tuesday.

1 Thank you very much. Bye-bye.

2 (Telephone conference ends at 3:10 p.m.)

3
4 I hereby certify the foregoing is a true and accurate
5 transcript from my stenographic notes in the proceeding.

6 /s/ Brian P. Gaffigan
7 Official Court Reporter
8 U.S. District Court
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